

1 Jack Russo (Cal. Bar No. 96068)  
Christopher Sargent (Cal. Bar No. 246285)  
2 ENTREPRENEUR LAW GROUP LLP  
401 Florence Street  
3 Palo Alto, CA 94301  
(650) 327-9800  
4 (650) 618-1863 fax  
jrusso@computerlaw.com  
5 csargent@computerlaw.com

6 Attorneys for Plaintiff  
RICHARD L. CHANG

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 **Richard L. Chang**, an individual,  
12 Plaintiff,

13 v.

14 **Zheng Tao Han**, and individual; **Chi-Ming**  
15 **Wu a/k/a Fred Wu**, and individual,  
16 **Biosuccess Biotech, Co., Ltd.**, a Cayman  
Islands corporation, and **Biosuccess Biotech,**  
**Co., Ltd.**, a Nevada corporation,

17 Defendants.  
18

19 **Zheng Tao Han**, an individual; **Biosuccess**  
20 **Biotech, Co., Ltd.**, a Cayman Islands  
corporation; **Biosuccess Biotech, Co., Ltd.**, a  
Nevada corporation,

21 Counterclaimant;

22 v.

23 **Richard L. Chang**,

24 Counterdefendant.  
25  
26  
27  
28

Case No. 5:14-cv-00426-EJD

**Joint Case Management Statement and  
[Proposed] Order**

Hearing Date: June 6, 2014, at 10a.m.  
Courtroom: 4, 5<sup>th</sup> Floor

The Hon. Edward J. Davila

1 The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT  
2 STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the  
3 Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

4 **1. JURISDICTION & SERVICE**

5 Plaintiff filed this case in the California Superior Court in and for the County of Santa Clara  
6 on January 3, 2014. On January 28, 2014, Defendants filed Notices of Removal to this Court based  
7 on a claim of diversity jurisdiction. Dkt. 1. Plaintiff filed a Motion to Remand based on facts  
8 surrounding Defendant Biosuccess's principal place of business in Santa Clara County, California,  
9 which, paired with Plaintiff's residence and domicile in Laguna Woods, California, destroys  
10 diversity. Dkt. 9. Defendants opposed the motion to remand on the basis that their principal place  
11 of business moved to Taiwan. Dkt. 14. On April 14, 2014, Defendants filed their answers and  
12 counterclaims. Dkt Nos. 23-26. The Motion to Remand was denied on April, 21, 2014. Dkt. 29.  
13 Defendants then filed a motion to transfer this case to the Central District of California on May 7,  
14 2014. Dkt. 33. The hearing for the motion to transfer will be held on June 6, 2014.

15 All parties have been served either by personal service or through counsel of record.

16 **2. FACTS**

17 **Plaintiff's Facts:** Professor Chang has been researching the compound known as 12-O-  
18 tetradecanoylphorbol-13-acetate ("TPA") since 1974 and has written numerous papers and given  
19 many lectures on the subject over the last three decades. Prof. Chang met Prof. Han in 1984  
20 following an invitation as part of a program to train and mentor students in cancer research from  
21 the Henan Tumor Research Institute of Henan, China. Prof. Han studied under Prof. Chang's  
22 tutelage for two years in New Jersey as a result.

23 Professor Chang designed, directed, and oversaw clinical trials in New Jersey as well as in  
24 China. Professor Chang is also the first named inventor of registered US Patent No. 6,063,814 (the  
25 "'814 Patent") related to his TPA research, as well as a series of related patent applications.

26 Plaintiff contends that between August and October 2006, Professor Han signed two  
27 agreements with Biosuccess Biotech, Co., Ltd. ("Biosuccess"), the (superseding) second of which  
28

(1) set an annual salary of \$125,000; (2) granted Professor Chang 18% ownership in Biosuccess; (3) allotted \$2 million to Professor Chang; and (4) assigned Professor Chang's rights in the '814 Patent to Biosuccess (the "Final Agreement").

Plaintiff contends that since 2006 Biosuccess has failed to pay Professor Chang his full annual salary for any year, and has failed to pay any part of the \$2 million guaranteed him under the Final Agreement. On January 18, 2013 Biosuccess sent a letter signed by its chairman of the board, Fred Wu, terminating Professor Chang's relationship with Biosuccess. Biosuccess still has not paid Professor Chang the unpaid wages he is owed.

**Defendant's Facts:**

Defendants disagree with all of the recitations of facts set forth by Plaintiff above. Defendant's positions are set forth in great detail in pending related litigation, as described below.

Indeed, the instant case shares many of the same parties and many of the same legal issues as the currently pending case in the Central District of California, captioned Richard Chang v. Biosuccess Biotech Co., Ltd., Case No. CV13-01340 JAK (ANx), first filed in February 2013 and which is currently set for trial on June 17, 2014 (the "Central District Kronstadt Case"). In his initial state court filing, Plaintiff Richard Chang even filed a Notice of Related Case indicating that this case was related to the Central District Kronstadt Case. The parties are actively in fact and expert discovery in the Central District Kronstadt Case.

One of the major issues in the Central District Kronstadt Case—that will certainly affect resolution of the instant case—is which agreement is the controlling assignment agreement. Plaintiff contends it is the Oct. 12, 2006 Agreement; Defendants contend that the agreement dated Aug. 30, 2006 was actually signed in September 2011 and was meant to supersede the Oct. 12, 2006 Agreement.

**3. LEGAL ISSUES**

**Plaintiff's Position:** Plaintiff contends that the legal issues are whether the Defendants' conduct and statements constituted violations of California securities law under California Corporations Code 25400(D) for untrue statements Defendants made to Plaintiff concerning the

1 sale of securities in the form of Biosuccess shares; whether Defendants violated the California  
2 Labor Code for failure to pay wages; whether Defendants breached their contractual obligations  
3 to pay substantial sums of over \$2M under the Final Agreement after Plaintiff executed his  
4 obligations in assigning his interest in the '814 Patent; whether the Defendants are *alter egos* of  
5 one another; a declaration that Plaintiff was in fact in control and fully in charge of all patent-  
6 related work; and whether Defendant Han materially contributed to the invention of patent related  
7 work.

8 **Defendants' Position:**

9 Defendants disagree that Plaintiff is entitled to any relief and that, *e.g.*, Plaintiff is owed no  
10 unpaid wages. The issues in this case substantially overlap with the Central District Kronstadt  
11 Case and as noted above, on May 7, 2014, Defendants filed a motion to transfer this case to the  
12 Central District of California. Dkt. 33. The hearing for the motion to transfer will be held on June  
13 6, 2014.

14  
15 On May 16, 2014, Defendants filed an *ex parte* motion in the Central District Kronstadt  
16 case to modify the Scheduling Order in order to accommodate the transfer and consolidation with  
17 this case, as well as the transfer and consolidation of the Ben Chang Case. [Central District  
18 Kronstadt Dkt. No. 177]. Plaintiff opposes the *ex parte* motion.

19 **4. MOTIONS**

20 Currently pending before this Court are three motions: (1) Defendants' Motion to Transfer  
21 Venue to the Central District (Dkt. 33); (2) Plaintiff's Motion to Dismiss Defendants'  
22 Counterclaims (Dkt. 35); and Plaintiff's Application for Writ of Attachment and Right to Attach  
23 Order (Dkt. 30).

24 The hearing for Defendants' Motion to Transfer Venue will be held on June 6, 2014;  
25 Plaintiff shall file its Opposition by May 21, 2014, and Defendants shall file their Reply in support  
26 of their Motion by May 28, 2014.

1 If this Court retains the case, the hearing for Plaintiff's Motion to Dismiss Counterclaims  
2 will be held on July 18, 2014; Defendant shall file its Opposition by May 22, 2014, and Plaintiff  
3 shall file its Reply in support of its Motion by May 29, 2014.

4 If this Court retains the case, the hearing on Plaintiff's Application for Writ of Attachment  
5 and Right to Attach Order shall be held on August 15, 2014. Defendants' Opposition was filed on  
6 May 9, 2014, and Plaintiff's Reply is due May 16, 2014.

7 **5. AMENDMENT OF PLEADINGS**

8 There have been no amendments to the pleadings and none are anticipated at this time,  
9 although Defendants reserve the right to amend.

10 **6. EVIDENCE PRESERVATION**

11 The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
12 Stored Information ("ESI Guidelines"), and confirm that they have met and conferred pursuant to  
13 Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence.

14 **7. DISCLOSURES**

15 The Parties will serve their initial disclosures under Rule 26(a)(1)(A) on or before May  
16 30, 2014.

17 **8. DISCOVERY**

18 No discovery has yet taken place in this case.

19 No limitations or modifications of the discovery rules in the Federal Rules of Civil  
20 Procedure are anticipated at this time.

21 **9. CLASS ACTIONS**

22 This is not a class action.

23 **10. RELATED CASES**

24 **January 2013:** *Biosuccess Biotech Co. Ltd. v. Richard Chang and Ben Chang*, Case No.  
25 113-CV-240580, Santa Clara County Superior Court, first filed in January 2013, and stayed  
26 as of April 16, 2013.

**February 2013:** *Richard L. Chang v. Biosuccess Biotech Co., Ltd.*, Case No.: 2:2013-cv-01340 JAK (ANx) United States District Court, Central District of California, first filed on February 2013; trial June 17, 2014 (“Central District Kronstadt”).

**January 2014:** *Ben Chang v. Biosuccess Biotech, Co. Ltd., a Cayman Islands Corporation, Biosuccess Biotech, Co. Ltd., a Nevada Corporation, Chi-Ming Wu a/k/a Fred Wu, and Zheng Tao Han*, Case No.: 5:14-cv-00425-LHK, United States District Court, Northern District of California, first filed on January 2014 in Santa Clara County Superior Court (Case No. 114-cv-258568) (“Ben Chang Case”)

**January 2014:** *Biosuccess Biotech, Co., Ltd. v. Rich Pharmaceuticals, Inc., IMAGIC, LLC, Richard L. Chang Holdings LLC, and Ben Chang*, Case No.: CV14-00310-PA (JCGx), United States District Court, Central District of California, filed January 2014.

## **11. RELIEF**

**Plaintiff’s Position:** Richard Chang requests damages for the tortious conduct and breaches of contract, in an amount to be determined, but believed to be in excess of the \$2M payment described in the Final Agreement (as defined above) and unpaid salary and wages in excess of \$600,000 with interest and penalties. Richard Chang further requests interest, penalties, and punitive damages for his unpaid wages and other employment damages pursuant to California Labor Code sections 200, 203, 218.5, 226, 558, 1194 and 1994.2.

Richard Chang also requests a declaratory judgment that Plaintiff was in fact in control and fully in charge of all patent-related work and that Defendant Han did not materially contribute to the invention of patent related work.

### **Defendant’s Position:**

Defendants counterclaims in this action seek a declaration that Chang is not an inventor, damages and injunctive relief for misappropriation of trade secrets, breach of fiduciary duty, unfair competition, conversion, and declaratory relief on written contract, breach of contract, fraud, negligent misrepresentation, and unjust enrichment, .

**12. SETTLEMENT AND ADR**

The parties have met and conferred about settlement and ADR options. In a related case in the Central District of California, the parties engaged in a mediation, though Plaintiff has changed counsel since that time.

The parties believe that a settlement conference before a magistrate judge is most likely to lead to a resolution of this matter. No additional discovery or motions are necessary to negotiate a resolution. However, defendants would request that plaintiff Richard Chang be present in person for the settlement conference.

**13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

All parties did not consent to a magistrate judge for all purposes.

**14. OTHER REFERENCES**

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

**15. NARROWING OF ISSUES**

Certain issues may be narrowed by motion or stipulation following the conclusion of the trial of the case in the Central District of California, and that trial is currently scheduled for June 17, 2014. No request to bifurcate issues, claims, or defenses is anticipated at this time, though both parties reserve their rights to request bifurcation at a later date.

**16. EXPEDITED TRIAL PROCEDURE**

The parties do not believe this case is suitable for the Court's expedited trial procedure under General Order 64.

**17. SCHEDULING**

**PLAINTIFF'S PROPOSAL:**

Event	Plaintiff's Proposal	Defendant's Proposal <sup>1</sup>
1. Initial Case Management Conference	June 6, 2014	June 6, 2014
2. Deadline to Amend Pleadings and Join Other Parties	July 31, 2014	July 31, 2014

<sup>1</sup> Defendants' proposal is conditioned upon the several cases not being consolidated.

Event	Plaintiff's Proposal	Defendant's Proposal <sup>1</sup>
3. Preliminary Pretrial Conference	August 8, 2014	August 8, 2014
4. Fact Discovery Cut-Off	August 28, 2014	August 28, 2014
5. Parties Submit Expert Reports on Issues for Which they Carry the Burden of Proof	September 12, 2014	September 12, 2014
6. Parties Submit Rebuttal Expert Reports	October 6, 2014	October 6, 2014
7. Expert Discovery Cut-Off	October 28, 2014	October 28, 2014
8. Last Day to File Dispositive Motions	November 4, 2014	November 4, 2014
9. Dispositive Motion Hearing	December 5, 2014	December 5, 2014

## 18. TRIAL

**Plaintiff's Position:** The case will be tried to a jury and is expected to last five (5) days.

**Defendant's Position:** The case will be tried to either the judge or a jury and is expected to last at least ten (10) days.

## 19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

Pursuant to Civil L.R. 3-16, the Plaintiff certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: None.

Pursuant to Civil L.R. 3-16, the Defendants certify that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

1. Richard Chang



2. Zheng Tao Han
3. Chi-Ming Wu a/k/a Fred Wu
4. Biosuccess Biotech Co., Ltd. (Cayman Islands)
5. Biosuccess Biotech Co., Ltd. (U.S.A.)

Dated: May 16, 2014

ENTREPRENEURLAW GROUP LLP

By: /s/ Christopher Sargent  
Jack Russo  
Christopher Sargent

Attorneys for Plaintiff  
PROFESSOR RICHARD L. CHANG

Dated: May 16, 2014

LEE TRAN & LIANG LLP

By: /s/ Heather Auyang  
Enoch Liang  
Heather Auyang

Attorneys for Defendants  
BIOSUCCESS BIOTECH, CO., LTD. *ET AL.*

**CASE MANAGEMENT ORDER**

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Edward J. Davila